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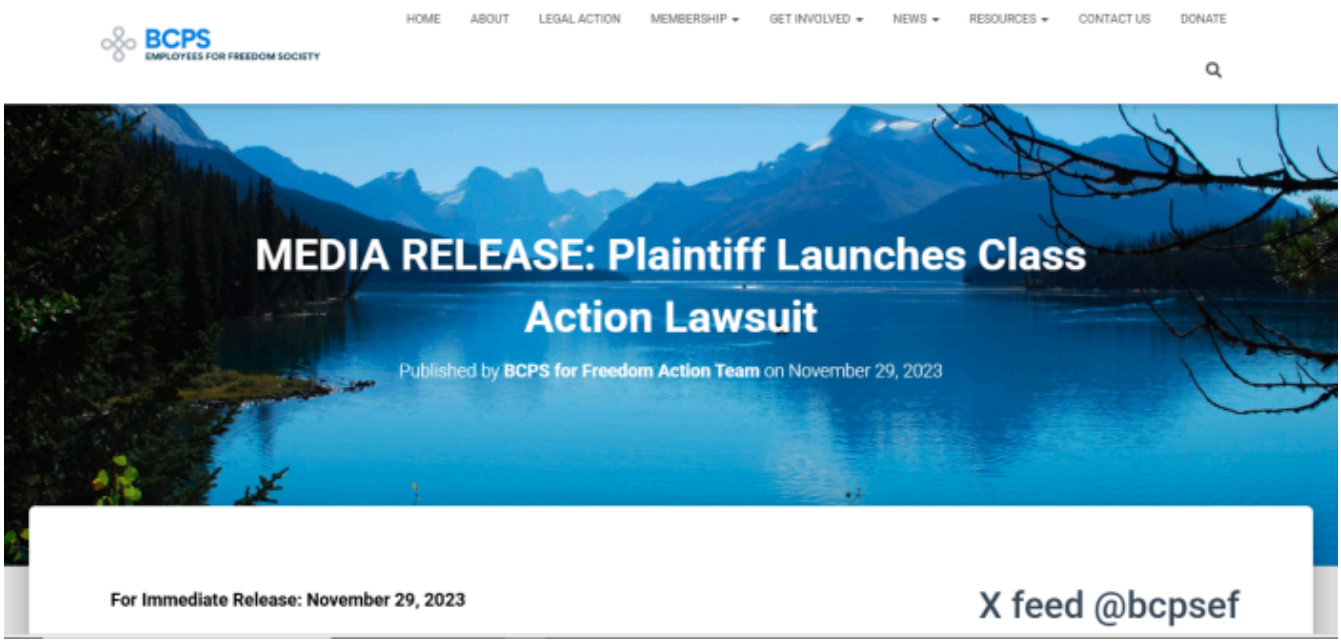
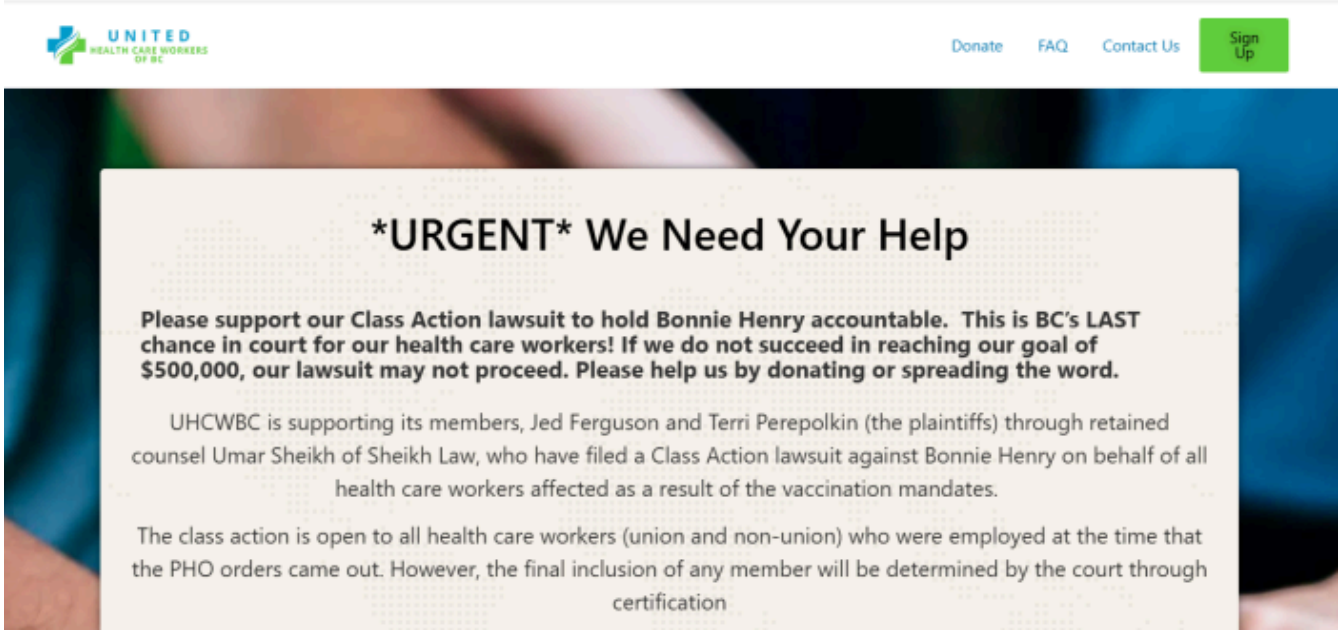
APRIL 18, 2025 BY RONNIE

BCPSEF And UHCWBC Certification Hearings In A Week Over s.2(d) Violations

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URGENT We Need Your Help
Please support our Class Action lawsuit to hold Bonnie Henry accountable. This is BC's LAST chance in court for our health care workers! If we do not succeed in reaching our goal of $500,000, our lawsuit may not proceed. Please help us by donating or spreading the word.
UHCWBC is supporting its members, Jed Ferguson and Terri Perepolkin (the plaintiffs) through retained counsel Umar Sheikh of Sheikh Law, who have filed a Class Action lawsuit against Bonnie Henry on behalf of all health care workers affected as a result of the vaccination mandates.
The class action is open to all health care workers (union and non-union) who were employed at the time that the PHO orders came out. However, the final inclusion of any member will be determined by the court through certification

During the week of April 28th to May 2nd, 2025, the fates of 2 Proposed Class Actions are to be determined in a Victoria Court. These are on behalf of B.C. public sector employees, and B.C. health care workers, both current and former. Their employment was threatened by injection mandates a few years ago.

The British Columbia Supreme Court will hear both: (a) Applications to Certify; and (b) Applications to Strike. The decisions will almost certainly be deferred until later.

The groups organizing and arranging funding are: (a) BCPSEF, B.C. Public Service Employees for Freedom; and (b) UHCWBC, United Health Care Workers of B.C.

Because of the overlap in the cases, they'll be argued at the same time. This is often done to save time and money for everyone involved.

See Parts 1, 2, 3, 4, and especially 5. These cases are all very similar.

Application To Strike BCPSEF Claim Entirely

> 5. The ***plaintiff was a unionized employee of the Province within the BC Public Service***. At all material times, his ***employment was subject to the collective agreement between his union, the B.C. General Employees' Union (the "GEU")***, and his employer, the Province.

> 9. On January 11, 2022, the GEU filed a grievance on behalf of the plaintiff, challenging the Province's decision to put him on leave without pay. On August 15, 2022, the ***GEU notified the plaintiff that it was withdrawing his grievance*** because the GEU had determined the grievance did not have a reasonable chance of success.

> 21. ***Jurisdiction in this case is determined through the "essential character" framework*** set out by the Supreme Court of Canada in Weber v. Ontario Hydro. The central question is whether the cause of action arises "from the interpretation, application or alleged violation of the [plaintiff's] collective agreement". ***Plaintiffs cannot avoid arbitration by pleading causes of action or wrongs which are typically adjudicated outside the labour relations process***. Rather, the central focus of the analysis is the facts of the complaint, not the legal form in which the complaint is advanced. ***Accordingly, Charter and tort claims fall within the exclusive jurisdiction of a labour arbitrator if their "essential character" relates to the interpretation and application of a collective agreement***.

> 22. The connection between the dispute and collective agreement does not need to be explicit or direct. Rather, defendants need only ***establish that the dispute arises "inferentially" out of the collective agreement to have it struck under Rule 21-8.*** This is consistent with the Supreme Court of Canada's direction to adopt "a liberal position" under which the legislative intention to grant labour arbitrators "broad exclusive jurisdiction over issues relating to conditions of employment" is given effect.

The B.C Government is asking that the Baldwin case (BCPS) be thrown out on the grounds that grievance structure provides for an alternative remedy. Consequently, the Courts have no jurisdiction.

This is essentially the same arguments that Payne (Feds4Freedom) made in Federal Court, and that case survived a Motion to Strike. In fairness, it is currently under appeal. This isn't to say that either Payne or Baldwin are hopeless, but this is something to consider.

In their response, BCPS stated that: "*The Plaintiffs allege that the Impugned Order and Regulation imposed terms on the Plaintiffs' employment that were contrary to (and indeed uncontemplated by) the relevant collective agreements.*" In short, the manner in which this was handled falls far outside the scope of any grievance scheme available.

Essentially, it's a re-argument of the Payne case. If the employer (namely, Government) unilaterally changes conditions of employment and circumvents the grievance system, are workers still expected to follow it?

Application To Strike UHCWBC Claim Entirely

> 17. This action is an abuse of process for two reasons.
> 18. First, the ***plaintiffs are attempting to usurp the roles of their unions***. Unionized employees give up certain individual rights in exchange for certain collective powers exercisable through unions. The ***issues raised in this action could have been, and in some instances were, raised by unions through the mandatory grievance and arbitration processes set out in the relevant collective agreements. Many of those grievances have now been settled***. To the extent that unions have settled grievances filed by the plaintiffs or putative class members, the issues raised by those grievances are res judicata and it is ***abusive for the plaintiffs to attempt to re-litigate them in this action***. If the plaintiffs (or any putative class members) are dissatisfied with how their unions have handled or settled their grievances, their remedy is a fair representation complaint under s. 12 of the Labour Relations Code.

> 24. Dealing first with the inducing breach of contract claim, one element of this tort is, of course, a breach of contract. To succeed in his inducing breach of contract claim against the PHO and Province, ***Mr. Ferguson would have to show (among other things) that his employer, the Vancouver Island Health Authority***, breached the collective agreement between the Facilities Subsector Bargaining Association and HEABC by suspending him without pay and terminating his employment. ***Ms. Perepolkin would have to show that her employer, the Interior Health Authority,*** breached the collective agreement between the Health Sciences Association and HEABC.

The B.C Government is also asking that the health care workers case be thrown out as well. It raises somewhat different issues.

The Government argues that the Representative Plaintiffs (Ferguson and Perepolkin), should have grieved through their respective unions against the employers.

But here's where things get interesting: The Provincial Government *isn't* the employer. They can't invoke collective bargaining agreements they aren't part of. Instead, the Claim accuses them of inducing a breach of contract *of third parties*. In other words, they meddled in someone ELSE'S business.

In the Hill case (FreeToFly), the Motion to Strike was dismissed because of this distinction. It was never appealed, and is soon to face its own certification hearings.

Things *might* be trickier since Ferguson and Perepolkin have already settled their cases internally. That said, it doesn't remove the fact that their employment was messed with in the first place. And again, the Province isn't the employer.

Certification Applications For Both BCPSEF And UHCWBC

(iv) Overlap in *Ferguson*, *Baldwin*, and *CSASPP* class definitions

48. Fourth, the class definition overlaps with the class definition in *Baldwin* as well as another extant proposed class proceeding in Supreme Court of British Columbia, Vancouver Registry No. S-210831, *Canadian Society for the Advancement of Science in Public Policy et al v. His Majesty the King in Right of the Province of British Columbia et al*. (**"CSASPP"**), such that there are some persons who are members of multiple classes.

49. With respect to *Baldwin*, approximately 213 persons subject to the PHO's Order were unionized BC Public Service employees who were also subject to "Human Resources Policy 25, COVID-19 Vaccination Policy" and the *Public Service COVID-19 Vaccination Regulation*.[47]

50. With respect to *CSASPP*, the proposed class definition in that proceeding includes "all natural persons 18 years or older, residing in British Columbia who, since on or after March 17, 2020, have been subject to orders…of the [PHO] made in response to the SARS-CoV-2 ("COVID-19") virus and/or pursuant to… Part 5 of the *Public Health Act*".[48] All, or almost all, putative class members in this proceeding are also putative class members in *CSASPP*.[49] There is a carriage issue as between *CSASPP* and this proceeding that the respective plaintiffs have not resolved.

Both BCPSEF and UHCWBC have submitted their Certification Applications. Other Affidavits were subsequently filed in support.

For most lawsuits, all of the parties are named at the start. Class Actions differ significantly because they allow many more Plaintiffs (and sometimes Defendants) to be added later. Here, a Judge must be satisfied that the Representative Plaintiff(s) speaks for a class of people, or classes. Also, it must be demonstrated that such litigation would be an effective way of dealing with all these claims at once.

These hearings aren't to try the case. Instead, they're to convince the Court that such a proceeding should be allowed to go ahead.

The Government raises the usual objections over abuse of process, and some new ones. Specifically, these cases might overlap with the CSASPP Proposed Class Action that has been under reserve for 2 years now. Another possible conflict is with a case called Ferguson. Hopefully, that can be resolved.

Questions are also raised about potential lack of common issues, and the feasibility of taking on such cases.

There is a joint response for both BCPSEF and UHCWEF, and an interesting read.

How These Various Proposed Class Actions Differ

CASE NAMES	PAYNE/BCPSEF	HILL/UHCWBC/UHCWO
Government Workers?	Yes	No
Filed Federally?	Payne	Hill
Filed in B.C.?	BCPSEF	UHCWBC
Filed in Ontario.?	n/a	UHCWO
Wrongful Termination by Gov't?	Yes	No
Inducement to Breach Contract?	No	Yes
Breach s.2(d) Charter Rights?	Yes	Yes
Malfeasance of Public Office?	Yes	Yes

Given that Hill and Payne both survived initial challenges in Federal Court, this is promising. Of course, there's no guarantee of what *this* Judge will do.

We'll have to see at the end of April.

BCPS EMPLOYEES FOR FREEDOM COURT DOCUMENTS:

(1) BCPS Notice Of Civil Claim October 2023

(2) BCPS Amended Notice Of Civil Claim April 2024

(3) BCPS Response To Civil Claim May 2024

(4) BCPS Requisition Case Management August 2024

(5) BCPS Notice Of Application Certification October 2024

(6) BCPS Notice Of Application To Strike October 2024

(7) BCPS Response To Application To Strike November 2024

(8) BCPS Consent Order Scheduling Of Materials January 2025

(9) BCPS Plaintiff Submissions Certification And Strike December 2004

(10) BCPS UHCWBC Plaintiff REPLY Submissions Cert/Strike January 2025

UHCWBC COURT DOCUMENTS:

(1) UHCWBC Notice Of Civil Claim October 2023

(2) UHCWBC Amended Notice Of Civil Claim April 2024

(3) UHCWBC Response To Notice Of Civil Claim May 2024

(4) UHCWBC Amended Response To Notice Of Civil Claim May 2024

(5) UHCWBC Requisition For Case Management Scheduling August 2024

(6) UHCWBC Notice Of Application For Certification October 2024

(7) UHCWBC Response To Application For Certification October 2024

(8) UHCWBC Notice Of Application To Strike Claim October 2024

(9) UHCWBC Consent Order Scheduling October 2024

(10) UHCWBC Response To Application To Strike November 2024

FREE TO FLY FEDERAL COURT DOCUMENTS:

(1) Hill Proposed Class Action Statement Of Claim May 2023

(2) Hill Order Case Management June 2023

(3) Hill Amended Statement Of Claim October 2023

(4) Hill Defendant Motion Record To Strike Claim April 2024

(5) Hill Plaintiff Responding Motion Record To Strike Claim May 2024

(6) Hill Plaintiff List Of Proposed Amendments May 2024

(7) https://www.canlii.org/en/ca/fct/doc/2025/2025fc242/2025fc242.html

PAYNE APPEAL DOCUMENTS:

(1) Payne Notice Of Appeal January 2025

(2) Payne Notice Of Appearance January 2025

PAYNE FEDERAL COURT DOCUMENTS:

(1) Payne Statement Of Claim October 2023

(2) Payne Notice Of Intent To Defend November 2023

(3) Payne Letter Intent To Strike May 2024

(4) Payne Defendant Motion Record To Strike August 2024

(5) Payne Plaintiff Responding Motion Record October 2024

(6) https://www.canlii.org/en/ca/fct/doc/2025/2025fc5/2025fc5.pdf

(7) https://www.canlii.org/en/ca/fct/doc/2025/2025fc5/2025fc5.html

UHCWO COURT DOCUMENTS:

(1) Wolfs Draft Statement Of Claim

(2) Wolfs Statement Of Claim August 2024

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